



Michael O. Leavitt  
Governor

**State of Utah**  
**Department of Transportation**

John R. Njord, P.E.  
Executive Director

August 11, 2003

Mr. Leslie Van Frank  
Cohne, Rappaport & Segal  
525 East First south, 5<sup>th</sup> Floor  
Salt Lake City, UT 84102

Subject: Findings and Order - File No. 02-19 Saltair II LLC Property

Dear Mr. Van Frank:

Enclosed are the Findings and Order of the Hearing Officer based on a review of the information submitted by all parties. We appreciate your time and effort in working with us in this matter. I remind you that should you desire to pursue your appeal further that you have 30 days to file a court action.

Sincerely,

David K. Miles, P. E.  
Hearing Officer

DKM:js

cc: Jim Beadles  
Mark Burns  
Sean Debenham  
Fran Rieck

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*ORDER ON APPEAL*  
APPLICATION FOR PERMIT BY R.O.A. GENERAL, INC., DBA REAGAN  
ADVERTISING  
REGION TWO FILE NO. 02-19

***Background and Discussion***

Region Two denied a permit request from R.O.A. General, Inc. (Reagan) on March 28, 2003. In its application, Reagan requested a permit to build signs on the west side of I-80 between MilePost 106.8 and 107.6. Region Two denied the permit on the grounds that the area was zoned for the primary purpose of allowing outdoor advertising. Both Utah law and federal regulation prohibit the construction of advertising signs in these areas. Utah Code Ann. § 72-7-504(1)(d)<sup>1</sup>; 23 CFR §§ 750.704, 708.

Reagan contests the Region's conclusion that Salt Lake County's zoning change was for the primary purpose of allowing outdoor advertising. In support of its appeal, Reagan has submitted an affidavit from the managing member of the Great Saltair II, LLC, the company that initially requested the zoning change. In his affidavit, Mr. Wolfson claims that the company applied for the zoning change to C-2 in order to create shops, luxury type facilities, a full-scale spa, or a storage site for small to midsize boats.

The Salt Lake County Planning Commission denied the rezoning request because "the site was not suited for legitimate commercial development" and "would not be in harmony with the intent of the zoning ordinance or county master plan." (Statement of Curtis Woodward, Minute Book, Board of County Commissioners, Salt Lake County, December 20, 2000).

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<sup>1</sup> This statute allows construction of billboards in a "commercial and industrial zone." Utah Code Ann. § 72-7-502(3), however, excludes from the definition of commercial and industrial zone "areas zoned for the sole purpose of allowing outdoor advertising." Here, however, state and federal law conflict. The federal regulation prohibits advertising in areas if a zoning action "is created **primarily** to permit outdoor advertising structure. 23 CFR 750.708b (emphasis added). Since federal law controls, the department will focus its analysis on whether the zoning change was made primarily to permit outdoor advertising, rather than for the sole purpose of allowing outdoor advertising.

Reagan appealed the planning commission's denial to the county commission. The hearing consisted of testimony from 20 people who were opposed to the zoning change. The opposition was not to the idea of general business development, however, but to the construction of billboard signs that would be allowed by the zoning change. Despite the public opposition, the county commission granted the appeal and allowed the zoning change by a 2 to 1 vote.

Region Two claims that several factors make it clear that the zoning request was primarily intended to permit billboards, not the construction of the commercial facilities listed in Mr. Wolfson's affidavit. A 1996 decision from the Utah Court of Appeals sets forth the analysis that the department must use to decide whether the rezoning was, in fact, done primarily for that purpose. *Kunz & Co. v. State*, 913 P.2d 765 (Utah App. 1996).

Under *Kunz & Co.*, discovering the purpose of a zoning change requires more than just an examination of the applicant's stated purpose. 913 P.2d at 767. "The fact finder can and should consider all relevant evidence. . . ." *Id.* The relevant evidence here includes Mr. Wolfson's stated purpose, the contents of the zoning permit application and the information contained in the transcript of the zoning appeal before the county commission.

Analyzing all these sources of evidence together, the department concludes that the zoning change was for the primary purpose of allowing outdoor advertising. First, Saltair's application for rezoning supports the view that it sought to have its property rezoned so that it could have eight billboards erected on its property. The map that Saltair attached to its rezoning application includes the potential locations of proposed

billboards at intervals of 500 feet along its property line and the words "100 X 4450' Strip to Be Rezoned to C-2". Official Planning Commission records confirm that the purpose of the application was to "allow a series of 8 billboards to be erected along I-80 . . . ." Also, but for a few very brief remarks, the only comments at the county commission, including those of Commissioners Shurtleff and Overson, concerned Reagan's proposed construction of billboards. Indeed, this was the focus of the entire hearing. The only "commercial" use of the property even discussed was outdoor advertising.

Fourth, Reagan Outdoor Advertising, whose primary business is the erection, maintenance, and leasing of advertising of space on outdoor advertising structures, was involved in every step of the rezoning process. Although Saltair submitted the initial zoning application, Guy Larsen, who is a Lease Manager for Reagan, was the Notary Public who witnessed Saltair's application for rezoning. Also, when the Planning Commission denied Saltair's rezoning application, Guy Larsen, on behalf of Reagan, appealed the decision to the County Commissioners.

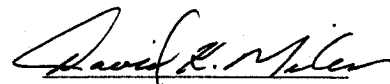
That Reagan, which eventually obtained the lease from Saltair to erect billboards on the property, took such an involved interest in the rezoning process, again suggests that the purpose for the rezoning was to permit the erection of outdoor advertising structures. Had the primary purpose of the zoning change been the non-advertising commercial use that Great Saltair purportedly wanted, it would at least have joined in the appeal. Indeed, the very fact that Reagan, rather than Great Saltair, appealed the zoning change denial, practically establishes that the purpose of the zoning change request, at

least at the county commission level, was for construction of billboards, not a luxury spa or marina.

***Order***

The department affirms Region Two's denial of Reagan's permit application. Reagan may appeal this order by filing a complaint in Third District Court within 30 days of the issuance of this order. Utah Code Ann. § 63-46b-15. Alternatively, Reagan may also seek administrative reconsideration of this order by filing a petition for reconsideration within 10 days pursuant to the department's administrative rules. Utah Admin. Code R907-1. Should Reagan petition for reconsideration, the 30-day period for appeal to court will begin upon issuance of the reconsideration decision.

David K. Miles, P. E.

  
Hearing Officer